IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition No.l009 of 2005

Bajirao A Ingle .. petitioner

vs

Prakash H Dugad and ors.. respondents

Mr.Javed Hussein for petitioner

Mr. N.R.Bubna for respondent no.l

CORAM: A.P.SHAH J

dt l3.l0.2005

P.C.

1. Heard Advocates. Perused the impugned judgment and order of the appellate bench of the Court of Small Causes.

2. This is a petition by the tenant arising under Maharashtra Rent Control Act,l999. The respondent landlord filed the suit for eviction mainly on three grounds, namely, (i) that the landlord requires the suit premises for bonafide personal use, (ii) that the tenant has unlawfully sublet the suit premises and (iii) that the tenant has

committed defaults in payment of rent. The writ of summons alongwith the copy of the plaint has been duly served on the petitioner i.e. defendant no.l and alleged sub-tenant i.e. defendant no 2. Neither the petitioner nor defendant no.l cared to file written statement and the suit proceeded exparte. The trial court held that the respondent landlord has established his bonafide personal requirement and also recorded a finding that the petitioner has unlawfully sub-let the premises to defendant no.2 .However,strangely the trial court decided the issue of hardship in favour of the petitioner although he washeld to be not in possession of the premises. As regards ground of default the trial court held that the landlord has filed the suit before the expiry of statutory period of 3 months from the date of demand notice as prescribed under section l5(2) and consequently the suit is not maintainable.

. The landlord preferred an appeal to the appellate bench of the Court of Small Causes. It appears that the service of appeal was duly effected on the petitioner but he chose to remain absent. The appeal bench held that when the petitioner is not in possession the issue of hardship cannot be decided in his favour. The

appeal court also rightly held that the provisions of section l5(2) are relevant only for the ground of default and not for other grounds i.e. the landlord’s bonafide personal requirement and sub-letting no notice is required.

. The appeal bench accordingly decreed the suit. In pursuance to the decree the landlord has already recovered possession.

. The learned counsel for the petitioner has contended that the petitioner was not properly served but is unable to demonstrate why service effected through bailiff should be regarded as invalid. Even petition is totally silent on the issue of service. In my opinion in the facts and circumstances of the case, no interference is warranted with the finding of fact recorded by the appeal court. Petition is dismissed.